

United States District Court
For The District of Minnesota

J. Patrick Gavin A/K/A
John P. Gavin, also doing business as
SEC Insight, Inc.,

Plaintiff,

v.

United States Securities and
Exchange Commission,

Defendant.

Civil File No. 04-4522 PAM/RLE

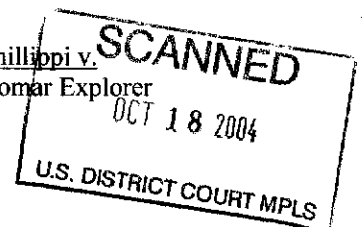
**COMPLAINT FOR
INJUNCTIVE RELIEF**

Plaintiff, J. Patrick Gavin A/K/A John P. Gavin, also doing business as SEC
Insight, Inc., alleges for his complaint against the above-named Defendant as follows:

NATURE OF THE ACTION

1. This is an action under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, as amended, to compel the production of records concerning Plaintiff, J. Patrick Gavin, A/K/A John P. Gavin, also doing business as SEC Insight, Inc., requests to the United States Securities and Exchange Commission ("SEC") for investigatory and other records pertaining to various public companies and to enjoin the Defendants from the use and issuance of the "Glomar" response to neither confirm nor deny the existence of records.¹

¹ Such "neither confirm nor deny" response is generally known as a Glomar response. See *Phillippi v. CIA*, 546 F.2d 1009, 1014 (D.C. Cir. 1976) (regarding a request for records relating to the Glomar Explorer submarine-retrieval vessel).



JURISDICTION

2. This Court has jurisdiction over the action pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1331.

PARTIES

3. Plaintiff, J. Patrick Gavin, A/K/A John P. Gavin, also doing business as SEC Insight, Inc., is a resident of the State of Minnesota, and SEC Insight, Inc. is a corporation registered to do business in the State of Minnesota with its offices located at 3185 Fernbrook Lane, Suite Two, Plymouth, Minnesota 55447, and is the requester in this action.

4. SEC Insight, Inc. is a private investment research company that regularly obtains documents from the SEC and other government agencies under the Freedom of Information Act 5 U.S.C. § 552, as amended and state disclosure laws. SEC Insight, Inc. publishes a newsletter and provides copies of documents received from the SEC for its subscribers for the benefit and protection of investors. SEC Insight, Inc. also provides, at no charge to the media, copies of its newsletter and documents obtained from the SEC.

5. Defendant United States Securities and Exchange Commission is an agency of the United States, and has possession and control of the agency records that are the subject of this action.

INTRODUCTION

6. Counts I-XII of this action concern the SEC's decision to neither confirm nor deny investigations in response to FOIA requests and in one instance, the additional use of exemption b(5) as asserted with the "Glomar" response. Counts XIII-XXV concern the SEC's arbitrary invocation of FOIA Exemption 7(A) in response to FOIA requests.

CAUSE OF ACTION

Count I

7. Plaintiff realleges paragraphs 1 through 6 as fully stated herein.

8. By letter dated June 24, 2003, Plaintiff requested pursuant to the FOIA, copies of "any documents or records regarding any informal and/or formal investigations and/or inquiries of Performance Food Group Company by the Commission within the past three (3) years." Plaintiff also requested "any SEC comment letters sent to or received from Performance Food Group Company within the past two years."

9. In its 10-Q for the quarter ending June 28, 2003, Performance Food Group Company disclosed accounting problems and an investigation by the SEC.

10. By letter dated July 22, 2003, Defendant SEC's FOIA/Privacy Act Office denied Plaintiff's request, given the FOIA number 2003-3746, in its entirety by stating, "[P]lease be advised that we can neither confirm nor deny the existence of any records responsive to your request. If such records were to exist, they would be exempt from disclosure pursuant to 5 U.S.C. § 552(b)(7)(A), 17 CFR § 200.80(b)(7)(i)(A). This exemption protects from disclosure records or information compiled for law enforcement purposes, which if disclosed, could reasonably be expected to interfere with enforcement proceedings. By outlining the provisions of this exemption, we do not mean to imply in any way that investigative records responsive to your request actually exist."

11. By letter dated September 23, 2003, Plaintiff administratively appealed the Defendant's response that it could neither confirm nor deny the existence of the requested records. Plaintiff sought the release of the requested records.

12. By letter dated December 30, 2003, Defendant denied Plaintiff's appeal and again officially declined to neither confirm nor deny the existence of the requested records.

13. Plaintiff has a right of access to the requested records under 5 U.S.C. § 552(a). None of the records have been disclosed to Plaintiff as required by the Freedom of Information Act.

Count II

14. Plaintiff realleges paragraphs 1 through 13 as fully stated herein.

15. In its annual report for the year ended December 31, 2001, Elan Corporation, PLC ("Elan") referred to an ongoing SEC investigation. This report was filed with the SEC on or about July 1, 2002.

16. By letter dated May 6, 2003, Plaintiff requested pursuant to the FOIA, copies of "any documents or records regarding any informal and/or formal investigations and/or inquiries of Elan Corporation, plc by the Commission within the past three (3) years." Plaintiff also requested "copies of any SEC comment letters sent to or received from Elan Corporation, plc within the past two years."

17. On or about June 26, 2003, Elan further announced that it was in discussions with the Office of Chief Accountant and the Division of Corporation Finance of the SEC regarding the accounting treatment used for a special purpose entity, Elan Pharmaceutical Investments III, Ltd.

18. By letter dated July 1, 2003, Defendant SEC's FOIA/Privacy Act Office denied the Plaintiff's request, given the FOIA number 2003-2676, in its entirety by stating, "[W]e can neither confirm nor deny the existence of any records responsive to

your request. If such records were to exist, they would be exempt from disclosure pursuant to 5 U.S.C. § 552(b)(7)(A), 17 CFR § 200.80(b)(7)(i)(A). This exemption protects from disclosure records or information compiled for law enforcement purposes which, if disclosed, could reasonably be expected to interfere with enforcement proceedings. By outlining the provisions of this exemption, we do not mean to imply in any way that investigative records responsive to your request actually exist.”

19. On or about July 16, 2003, Elan announced that it would delay the filing of its annual report due to ongoing discussions with the SEC about accounting issues.

20. On or about September 4, 2003, Elan filed its annual report for calendar year 2002. In this report, the company again referred to an ongoing SEC investigation.

21. By letter dated September 23, 2003, Plaintiff administratively appealed the Defendant’s response that it could neither confirm nor deny the existence of the requested records. Plaintiff sought the release of the requested records.

22. By letter dated December 15, 2003, Defendant denied Plaintiff’s appeal and again officially declined to neither confirm nor deny the existence of the requested records.

23. Plaintiff has exhausted his administrative remedies.

24. Plaintiff has a right of access to the requested records under 5 U.S.C. § 552(a). None of the records have been disclosed to Plaintiff as required by the Freedom of Information Act.

Count III

25. Plaintiff realleges paragraphs 1 through 24 as fully stated herein.

26. By letter dated March 17, 2003, Plaintiff requested pursuant to the FOIA, copies of “any documents or records regarding any informal and/or formal investigations and/or inquiries of The Kroger Co. by the Commission within the past three (3) years.” Plaintiff also requested “any SEC comment letters sent to or received from The Kroger Co. within the past two years.”

27. By letter dated April 9, 2003, Defendant SEC’s FOIA/Privacy Act Office denied Plaintiff’s request, given the FOIA number 2003-1713, in its entirety by stating, “[W]e can neither confirm nor deny the existence of any records responsive to your request. If such records were to exist, they would be exempt from disclosure pursuant to 5 U.S.C. § 552(b)(7)(A), 17 CFR § 200.80(b)(7)(i). This exemption protects from disclosure records or information compiled for law enforcement purposes, which if disclosed, could reasonably be expected to interfere with enforcement activities. By outlining the provisions of this exemption, we do not mean to imply in any way that investigative records responsive to your request actually exist.”

28. By letter dated September 23, 2003, Plaintiff administratively appealed the Defendant’s response that it could neither confirm nor deny the existence of the requested records. Plaintiff sought the release of the requested records.

29. By letter dated December 15, 2003, Defendant denied Plaintiff’s appeal and again officially declined to neither confirm nor deny the existence of the requested records. This appeal response did confirm an active and ongoing investigation which, upon information and belief, had been referenced by The Kroger Co. management in a June 25, 2002 conference call with investors.

30. Plaintiff has exhausted his administrative remedies.

31. Plaintiff has a right of access to the requested records under 5 U.S.C. § 552(a). None of the records have been disclosed to Plaintiff as required by the Freedom of Information Act.

Count IV

32. Plaintiff realleges paragraphs 1 through 31 as fully stated herein.

33. By letter dated December 22, 2003, Plaintiff requested pursuant to the FOIA, copies of “any documents or records regarding any informal and/or formal investigations and/or inquiries of The Proctor & Gamble Company by the Commission since my last request in April 2003.” Plaintiff also requested “any SEC comment letters sent to or received from The Proctor & Gamble Company since my last request in April 2003.”

34. By letter dated January 23, 2004, Defendant SEC’s FOIA/Privacy Act Office denied Plaintiff’s request, given the FOIA number 2004-1105, in its entirety by stating, “[W]e can neither confirm nor deny the existence of any records responsive to your request. If such records were to exist, they would be exempt from disclosure pursuant to 5 U.S.C. § 552(b)(7)(A), 17 CFR § 200.80(b)(7)(i). This exemption protects from disclosure records or information compiled for law enforcement purposes, which if disclosed, could reasonably be expected to interfere with enforcement activities. By outlining the provisions of this exemption, we do not mean to imply in any way that investigative records responsive to your request actually exist.”

35. By letter dated March 31, 2004, Plaintiff administratively appealed the Defendant’s response that it could neither confirm nor deny the existence of the requested records. Plaintiff sought the release of the requested records.

36. By letter dated May 26, 2004, Defendant denied Plaintiff's appeal and again officially declined to neither confirm nor deny the existence of the requested records.

37. Plaintiff has exhausted his administrative remedies.

38. Plaintiff has a right of access to the requested records under 5 U.S.C. § 552(a). None of the records have been disclosed to Plaintiff as required by the Freedom of Information Act.

Count V

39. Plaintiff realleges paragraphs 1 through 38 as fully stated herein.

40. By letter dated January 6, 2004, Plaintiff requested pursuant to the FOIA, copies of "any documents or records regarding any informal and/or formal investigations and/or inquiries of NUI Corporation within the past three (3) years which were either: (1) sent by the Commission to NUI Corporation (or its agents), or (2) received by the SEC from NUI Corporation (or its agents)." Plaintiff also requested "copies of any SEC comment letters sent to or received from NUI Corporation (or its agents) within the past two years."

41. By letter dated February 11, 2004, Defendant SEC's FOIA/Privacy Act Office assigned this request FOIA number 2004-1718, and released one document, a "No Review" letter. The Defendant denied the remainder of Plaintiff's request by stating, "[W]e can neither confirm nor deny the existence of certain records responsive to your request. If any such records were to exist, they would be exempt from disclosure pursuant to 5 U.S.C. § 552(b)(7)(A), 17 CFR § 200.80(b)(7)(i). This exemption protects from disclosure records or information compiled for law enforcement purposes, which if disclosed, could reasonably be expected to interfere with enforcement activities. By

outlining the provisions of this exemption, we do not mean to imply in any way that investigative records responsive to your request actually exist.”

42. By letter dated April 8, 2004, Plaintiff administratively appealed the Defendant’s response that it could neither confirm nor deny the existence of the requested records. Plaintiff sought the release of the requested records.

43. By letter dated June 2, 2004, Defendant denied Plaintiff’s appeal and again officially declined to neither confirm nor deny the existence of the requested records.

44. Plaintiff has exhausted his administrative remedies.

45. Plaintiff has a right of access to the requested records under 5 U.S.C. § 552(a). None of the records have been disclosed to Plaintiff as required by the Freedom of Information Act.

Count VI

46. Plaintiff realleges paragraphs 1 through 45 as fully stated herein.

47. By letter dated July 17, 2003, Plaintiff requested pursuant to the FOIA, copies of “any documents or records regarding any informal and/or formal investigations and/or inquiries of Dynacq International, Inc. by the Commission within the past three (3) years.” Plaintiff also requested “any SEC comment letters sent to or received from Dynacq International, Inc. within the past two years.”

48. By letter dated August 1, 2003, Defendant SEC’s FOIA/Privacy Act Office denied Plaintiff’s request, given the FOIA number 2003-4437, in its entirety by stating, “[A]ccording to our records indices, Dynacq was named in a matter under inquiry. All matters under inquiry are considered deliberative and pre-decisional in nature and as such are exempt from disclosure under Exemption 5.” Defendant also stated “[F]urther, we

can neither confirm nor deny the existence of any other records that may be responsive to your request. If such records were to exist, they would be exempt from disclosure pursuant to 5 U.S.C. § 552(b)(7)(A), 17 CFR § 200.80(b)(7)(i). This exemption protects from disclosure records or information compiled for law enforcement purposes, which if disclosed, could reasonably be expected to interfere with enforcement proceedings. By outlining the provisions of this exemption, we do not mean to imply in any way that investigative records responsive to your request actually exist.”

49. By letter dated September 23, 2003, Plaintiff administratively appealed the Defendant’s response that it could neither confirm nor deny that certain records existed. Plaintiff also appealed Defendant’s decision to withhold other portions of the requested material pursuant to 5 U.S.C. § 552(b)(5). In his appeal, Plaintiff noted the Defendant’s failure to release any segregable information. Plaintiff further appealed the Defendant’s failure to provide him with an estimate of the volume of the withheld material pursuant to 17 CFR 200.80((d)(5)(4).

50. By letter dated January 13, 2004, Defendant denied Plaintiff’s appeal. Defendant further stated that the records withheld under Exemption 5 are the same four pages of records previously withheld from Plaintiff in his Request No. 2003-165 pursuant to Exemptions 2, 5, and 7(C). Defendant affirmed the withholding of these four pages pursuant to FOIA exemptions 2, 5, and 7(C). Defendant further confirmed that other records did indeed exist, but that these records were now being withheld pursuant to FOIA Exemption 7(A). Defendant further made a blanket assertion that providing an “estimate of the withheld materials would undermine the interests which Exemption 7(A)

protects, FOIA does not require such estimation in this case. See 5 U.S.C. § 552(a)(6)(F).”

51. Plaintiff has exhausted his administrative remedies.

52. Plaintiff has a right of access to the requested records under 5 U.S.C. § 552(a). None of the records have been disclosed to Plaintiff as required by the Freedom of Information Act.

Count VII

53. Plaintiff realleges paragraphs 1 through 52 as fully stated herein.

54. By letter dated September 4, 2003, Plaintiff requested pursuant to the FOIA, copies of “any documents or records regarding any informal and/or formal investigations and/or inquiries of aaiPharma Inc. by the Commission within the past three (3) years.” Plaintiff also requested “any SEC comment letters sent to or received from aaiPharma Inc. within the past two years.”

55. By letter dated October 8, 2003, Defendant SEC’s FOIA/Privacy Act Office denied Plaintiff’s request, given the FOIA number 2003-5437, in its entirety by stating, “[P]lease be advised that we can neither confirm nor deny the existence of any records responsive to your request. If such records were to exist, they would be exempt from disclosure pursuant to 5 U.S.C. § 552(b)(7)(A), 17 CFR § 200.80(b)(7)(i). This exemption protects from disclosure records or information compiled for law enforcement purposes, which if disclosed, could reasonably be expected to interfere with enforcement proceedings. By outlining the provisions of this exemption, we do not mean to imply in any way that investigative records responsive to your request actually exist.”

56. By letter dated November 4, 2003, Plaintiff administratively appealed the Defendant's response that it could neither confirm nor deny the existence of the requested records. Plaintiff sought the release of the requested records.

57. By letter dated December 30, 2003², Defendant denied Plaintiff's appeal and again officially declined to neither confirm nor deny the existence of the requested records.

58. Plaintiff has exhausted his administrative remedies.

59. Plaintiff has a right of access to the requested records under 5 U.S.C. § 552(a). None of the records have been disclosed to Plaintiff as required by the Freedom of Information Act.

Count VIII

60. Plaintiff realleges paragraphs 1 through 59 as fully stated herein.

61. By letter dated April 14, 2003, Plaintiff requested pursuant to the FOIA, copies of "any documents or records regarding any informal and/or formal investigations and/or inquiries of Nucor Corporation by the Commission within the past three (3) years." Plaintiff also requested "any SEC comment letters sent to or received from Nucor Corporation within the past two years."

62. By letter dated July 23, 2003, Defendant SEC's FOIA/Privacy Act Office responded to the FOIA request, given the number 2003-2293, by stating "I am releasing to you comment letters dated September 11 and December 23, 2002 and January 31, 2003 and company responses dated October 11, 2002 and January 7 and 17, and February 14 and 26, 2003." Defendant SEC's FOIA/Privacy Act Office further stated, "[W]e can neither confirm nor deny the existence of any other records responsive to your request. If

² The SEC's FOIA/Privacy Act Office dated this letter December 30, 2004 in error.

such records existed, they would be exempt from disclosure under 5 U.S.C. § 552(b)(7)(A), 17 CFR § 200.80(b)(7)(i). This exemption protects from disclosure records or information compiled for law enforcement purposes, which if disclosed, could reasonably be expected to interfere with enforcement proceedings. By outlining the provisions of this exemption, we do not mean to imply in any way that investigative records responsive to your request actually exist.”

63. By letter dated October 9, 2003, Plaintiff administratively appealed the Defendant’s response that it could neither confirm nor deny the existence of the requested records. Plaintiff sought the release of the requested records.

64. By letter dated December 15, 2003, Defendant denied Plaintiff’s appeal and again officially declined to neither confirm nor deny the existence of the requested records.

65. Plaintiff has exhausted his administrative remedies.

66. Plaintiff has a right of access to the requested records under 5 U.S.C. § 552(a). None of the records have been disclosed to Plaintiff as required by the Freedom of Information Act.

Count IX

67. Plaintiff realleges paragraphs 1 through 66 as fully stated herein.

68. By letter dated April 7, 2003, Plaintiff requested pursuant to the FOIA, copies of “any documents or records regarding any informal and/or formal investigations and/or inquiries of Bally Total Fitness Holding Corporation by the Commission within the past three (3) years.” Plaintiff also requested “any SEC comment letters sent to or received from Bally Total Fitness Holding Corporation within the past two years.”

69. By letter dated April 14, 2003, Defendant SEC's FOIA/Privacy Act Office responded to the FOIA request, given the number 2003-2079, by stating "[P]lease be advised that we can neither confirm nor deny the existence of any records responsive to your request. If such records were to exist, they would be exempt from disclosure pursuant to 5 U.S.C. § 552(b)(7)(A), 17 CFR § 200.80(b)(7)(i). This exemption protects from disclosure records or information compiled for law enforcement purposes, which if disclosed, could reasonably be expected to interfere with enforcement proceedings. By outlining the provisions of this exemption, we do not mean to imply in any way that investigative records responsive to your request actually exist."

70. By letter dated September 23, 2003, Plaintiff administratively appealed the Defendant's response that it could neither confirm nor deny the existence of the requested records. Plaintiff sought the release of the requested records.

71. By letter dated December 15, 2003, Defendant denied Plaintiff's appeal and again officially declined to neither confirm nor deny the existence of the requested records.

72. Plaintiff has exhausted his administrative remedies.

73. Plaintiff has a right of access to the requested records under 5 U.S.C. § 552(a). None of the records have been disclosed to Plaintiff as required by the Freedom of Information Act.

Count X

74. Plaintiff realleges paragraphs 1 through 73 as fully stated herein.

75. By letter dated February 18, 2003, Plaintiff requested pursuant to the FOIA, copies of "any documents or records regarding any informal and/or formal investigations

and/or inquiries of Charles Schwab Corporation, The by the Commission within the past three (3) years.” Plaintiff also requested “any SEC comment letters sent to or received from Charles Schwab Corporation, The within the past two years.”

76. By letter dated March 17, 2003, Defendant SEC’s FOIA/Privacy Act Office denied Plaintiff’s request, given the FOIA number 2003-1373, in its entirety by stating, “[W]e can neither confirm nor deny the existence of any records responsive to your request. If such records existed, they would be exempt from disclosure under 5 U.S.C. § 552(b)(7)(A), 17 CFR § 200.80(b)(7)(i). This exemption protects from disclosure records or information compiled for law enforcement purposes, which if disclosed, could reasonably be expected to interfere with enforcement proceedings. By outlining the provisions of this exemption, we do not mean to imply in any way that investigative records responsive to your request actually exist.”

77. By letter dated September 23, 2003, Plaintiff administratively appealed the Defendant’s response that it could neither confirm nor deny the existence of the requested records. Plaintiff sought the release of the requested records.

78. By letter dated November 26, 2003, Defendant denied Plaintiff’s appeal and again officially declined to neither confirm nor deny the existence of the requested records.

79. Plaintiff has exhausted his administrative remedies.

80. Plaintiff has a right of access to the requested records under 5 U.S.C. § 552(a). None of the records have been disclosed to Plaintiff as required by the Freedom of Information Act.

Count XI

81. Plaintiff realleges paragraphs 1 through 80 as fully stated herein.

82. By letter dated June 30, 2003, Plaintiff requested pursuant to the FOIA, copies of “any documents or records regarding any informal and/or formal investigations and/or inquiries of Cablevision Systems Corporation aka CSC Holdings, Inc. by the Commission within the past three (3) years.” Plaintiff also requested “any SEC comment letters sent to or received from Cablevision Systems Corporation aka CSC Holdings, Inc. within the past two years.”

83. By letter dated July 30, 2003, Defendant SEC’s FOIA/Privacy Act Office denied Plaintiff’s request, given the FOIA number 2003-3871, in its entirety by stating, “[P]lease be advised, we can neither confirm nor deny the existence of any enforcement records responsive to your request. If such records were to exist, they would be exempt from disclosure pursuant to 5 U.S.C. § 552(b)(7)(A), 17 CFR § 200.80(b)(7)(i). This exemption protects from disclosure records or information compiled for law enforcement purposes, which if disclosed, could reasonably be expected to interfere with enforcement proceedings. By outlining the provisions of this exemption, we do not mean to imply in any way that investigative records responsive to your request actually exist.”

84. By letter dated September 23, 2003, Plaintiff administratively appealed the Defendant’s response that it could neither confirm nor deny the existence of the requested records. Plaintiff sought the release of the requested records.

85. By letter dated November 17, 2003, Defendant denied Plaintiff’s appeal and again officially declined to confirm or deny the existence of the requested documents.

86. Plaintiff has exhausted his administrative remedies.

87. Plaintiff has a right of access to the requested records under 5 U.S.C. § 552(a). None of the records have been disclosed to Plaintiff as required by the Freedom of Information Act.

Count XII

88. Plaintiff realleges paragraphs 1 through 87 as fully stated herein.

89. By letter dated July 7, 2003, Plaintiff requested pursuant to the FOIA, copies of "any documents or records regarding any informal and/or formal investigations and/or inquiries of American Capital Strategies, Ltd. by the Commission since my last request in March 2003." Plaintiff also requested "any SEC comment letters sent to or received from American Capital Strategies, Ltd. by the Commission since my last request in March 2003."

90. By letter dated July 17, 2003, Defendant SEC's FOIA/Privacy Act Office denied Plaintiff's request, given the FOIA number 2003-3924, in its entirety by stating, "[P]lease be advised that we can neither confirm nor deny the existence of any records responsive to your request. If such records were to exist, they would be exempt from disclosure pursuant to 5 U.S.C. § 552(b)(7)(A), 17 CFR § 200.80(b)(7)(i). This exemption protects from disclosure records or information compiled for law enforcement purposes, which if disclosed, could reasonably be expected to interfere with enforcement proceedings. By outlining the provisions of this exemption, we do not mean to imply in any way that investigative records responsive to your request actually exist."

91. Upon information and belief, in a 10-Q filed in August 2003, American Capital Strategies, Ltd. disclosed an SEC investigation.

92. By letter dated September 23, 2003, Plaintiff administratively appealed the Defendant's response that it could neither confirm nor deny the existence of the requested records. Plaintiff sought the release of the requested records.

93. By letter dated November 17, 2003, Defendant denied Plaintiff's appeal and again officially declined to confirm or deny the existence of the requested documents.

94. Plaintiff has exhausted his administrative remedies.

95. Plaintiff has a right of access to the requested records under 5 U.S.C. § 552(a). None of the records have been disclosed to Plaintiff as required by the Freedom of Information Act.

Count XIII

96. Plaintiff realleges paragraphs 1 through 95 as fully stated herein.

97. By letter dated November 13, 2003, Plaintiff requested pursuant to the FOIA, copies of "any documents or records regarding any informal and/or formal investigations and/or inquiries of Duke Energy Corporation by the Commission since my last request in April 2002." Plaintiff also requested "any SEC comment letters sent to or received from Duke Energy Corporation since my last request in April 2002."

98. By letter dated February 6, 2004, Defendant SEC's FOIA/Privacy Act Office denied Plaintiff's request, given the FOIA number 2004-0664, in its entirety by stating, "[W]e are withholding certain records that may be responsive to your request under 5 U.S.C. § 552(b)(7)(A), 17 CFR § 200.80(b)(7)(i)."

99. By letter dated April 21, 2004, Plaintiff administratively appealed the Defendant's determination to refuse access to the requested agency records under exemption (7)(A).

100. By letter dated May 26, 2004, Defendant denied Plaintiff's appeal refusing Plaintiff access to all of the requested agency records on grounds of 5 U.S.C. § 552(b)(7)(A).

101. Plaintiff has exhausted his administrative remedies.

102. Plaintiff has a right of access to the requested records under 5 U.S.C. § 552(a). None of the records have been disclosed to Plaintiff as required by the Freedom of Information Act.

Count XIV

103. Plaintiff realleges paragraphs 1 through 102 as fully stated herein.

104. By letter dated August 29, 2003, Plaintiff requested pursuant to the FOIA, copies of "any documents or records regarding any informal and/or formal investigations and/or inquiries of Cendant Corporation by the Commission within the past three (3) years. For purposes of this request, this should be interpreted to include any informal and/or formal investigations and/or inquiries that somehow involve Cendant Corporation." Plaintiff also requested "any SEC comment letters sent to or received from Cendant Corporation within the past two years."

105. By letter dated February 9, 2004, Defendant SEC's FOIA/Privacy Act Office denied Plaintiff's request, given the FOIA number 2003-5354, in its entirety by stating, "[W]e are withholding records that may be responsive to your request under 5 U.S.C. § 552(b)(7)(A), 17 CFR § 200.80(b)(7)(i)."

106. By letter dated April 21, 2004, Plaintiff administratively appealed the Defendant's determination to refuse access to the requested agency records under exemption (7)(A).

107. By letter dated May 26, 2004, Defendant denied Plaintiff's appeal refusing Plaintiff access to all of the requested agency records on grounds of 5 U.S.C. § 552(b)(7)(A).

108. Plaintiff has exhausted his administrative remedies.

109. Plaintiff has a right of access to the requested records under 5 U.S.C. § 552(a). None of the records have been disclosed to Plaintiff as required by the Freedom of Information Act

Count XV

110. Plaintiff realleges paragraphs 1 through 109 as fully stated herein.

111. By letter dated February 19, 2004, Plaintiff requested pursuant to the FOIA, copies of "any documents or records regarding any informal and/or formal investigations and/or inquiries of Cendant Corporation since my last request in August 2003 which were either: (1) sent by the Commission to Cendant Corporation (or its agents), or (2) received by the SEC from Cendant Corporation (or its agents)." Plaintiff also requested "any SEC comment letters sent to or received from Cendant Corporation (or its agents) since my last request in August 2003."

112. By letter dated March 31, 2004, Defendant SEC's FOIA/Privacy Act Office denied Plaintiff's request, given the FOIA number 2004-3265, in its entirety by stating, "[C]ertain documents and nonpublic correspondence identified in our indices may be responsive to your request. However, since they were compiled for law enforcement purposes, the release of which could reasonably be expected to interfere with enforcement activities undertaken or likely to be undertaken by the Commission, I am withholding them under 5 U.S.C. § 552(b)(7)(A), 17 CFR § 200.80(b)(7)(i)."

113. By letter dated April 21, 2004, Plaintiff administratively appealed the Defendant's determination to refuse access to the requested agency records under exemption (7)(A).

114. By letter dated May 26, 2004, Defendant denied Plaintiff's appeal refusing Plaintiff access to all of the requested agency records on grounds of 5 U.S.C. § 552(b)(7)(A).

115. Plaintiff has exhausted his administrative remedies.

116. Plaintiff has a right of access to the requested records under 5 U.S.C. § 552(a). None of the records have been disclosed to Plaintiff as required by the Freedom of Information Act.

Count XVI

117. Plaintiff realleges paragraphs 1 through 116 as fully stated herein.

118. By letter dated March 3, 2003, Plaintiff requested pursuant to the FOIA, copies of "any documents or records regarding any informal and/or formal investigations and/or inquiries of General Mills, Inc. by the Commission since my last request in October of 2002." Plaintiff also requested "any SEC comment letters sent to or received from General Mills, Inc. also since my last request made in October of 2002."

119. By letter dated March 31, 2003, Defendant SEC's FOIA/Privacy Act Office released a comment letter to the Plaintiff.

120. By letter dated November 18, 2003, Defendant SEC's FOIA/Privacy Act Office denied Plaintiff's request, given the FOIA number 2003-1523, by stating, "[C]ertain nonpublic records identified in our indices may be responsive to your request. Since the file was compiled for law enforcement purposes, the release of which could

reasonably be expected to interfere with enforcement activities undertaken or likely to be undertaken by the Commission I am withholding the records under 5 U.S.C. § 552(b)(7)(A), 17 CFR § 200.80(b)(7)(i).”

121. By letter dated January 16, 2004, Plaintiff administratively appealed the Defendant’s determination to refuse access to the requested agency records under exemption (7)(A).

122. By letter dated March 10, 2004, Defendant denied Plaintiff’s appeal refusing Plaintiff access to all of the requested agency records on grounds of 5 U.S.C. § 552(b)(7)(A).

123. Plaintiff has exhausted his administrative remedies.

124. Plaintiff has a right of access to the requested records under 5 U.S.C. § 552(a). None of the records have been disclosed to Plaintiff as required by the Freedom of Information Act.

Count XVII

125. Plaintiff realleges paragraphs 1 through 124 as fully stated herein.

126. By letter dated November 21, 2003, Plaintiff requested pursuant to the FOIA, copies of “any documents or records regarding any informal and/or formal investigations and/or inquiries of eFunds Corporation by the Commission within the past three (3) years.” Plaintiff also requested “any SEC comment letters sent to or received from eFunds Corporation within the past two years.”

127. By letter dated December 17, 2003, Defendant SEC’s FOIA/Privacy Act Office denied Plaintiff’s request, given the FOIA number 2004-0776, in its entirety by stating, “[C]ertain documents identified in our indices may be responsive to your request.

However, since the file was compiled for law enforcement purposes, the release of which could reasonably be expected to interfere with enforcement activities undertaken or likely to be undertaken by the Commission I am withholding the records under 5 U.S.C. § 552(b)(7)(A), 17 CFR § 200.80(b)(7)(i)."

128. By letter dated January 16, 2004, Plaintiff administratively appealed the Defendant's determination to refuse access to the requested agency records under exemption (7)(A).

129. By letter dated February 12, 2004, Defendant denied Plaintiff's appeal refusing Plaintiff access to all of the requested agency records on grounds of 5 U.S.C. § 552(b)(7)(A).

130. Plaintiff has exhausted his administrative remedies.

131. Plaintiff has a right of access to the requested records under 5 U.S.C. § 552(a). None of the records have been disclosed to Plaintiff as required by the Freedom of Information Act.

Count XVIII

132. Plaintiff realleges paragraphs 1 through 131 as fully stated herein.

133. By letter dated August 11, 2003, Plaintiff requested pursuant to the FOIA, copies of "any documents or records regarding any informal and/or formal investigations and/or inquiries of Afc Enterprises, Inc. by the Commission within the past three (3) years." Plaintiff also requested "any SEC comment letters sent to or received from Afc Enterprises, Inc. within the past two years."

134. By letter dated November 18, 2003, Defendant SEC's FOIA/Privacy Act Office denied Plaintiff's request, given the FOIA number 2003-4867, in its entirety by

stating, "I am withholding the nonpublic records that may be responsive to your request under 5 U.S.C. § 552(b)(7)(A), 17 CFR § 200.80(b)(7)(i)."

135. By letter dated December 17, 2003, Plaintiff administratively appealed the Defendant's determination to refuse access to the requested agency records under exemption (7)(A).

136. By letter dated February 12, 2004, Defendant denied Plaintiff's appeal refusing Plaintiff access to all of the requested agency records on grounds of 5 U.S.C. § 552(b)(7)(A).

137. Plaintiff has exhausted his administrative remedies.

138. Plaintiff has a right of access to the requested records under 5 U.S.C. § 552(a). None of the records have been disclosed to Plaintiff as required by the Freedom of Information Act.

Count XIX

139. Plaintiff realleges paragraphs 1 through 136 as fully stated herein.

140. By letter dated June 17, 2003, Plaintiff requested pursuant to the FOIA, copies of "any documents or records regarding any informal and/or formal investigations and/or inquiries of Orthodontic Centers of America, Inc. by the Commission within the past three (3) years." Plaintiff also requested "any SEC comment letters sent to or received from Orthodontic Centers of America within the past two years."

141. By letter dated November 18, 2003, Defendant SEC's FOIA/Privacy Act Office denied Plaintiff's request, given the FOIA number 2003-3617, in its entirety by stating, "I am withholding the nonpublic records that may be responsive to your request under 5 U.S.C. § 552(b)(7)(A), 17 CFR § 200.80(b)(7)(i)."

142. By letter dated December 17, 2003, Plaintiff administratively appealed the Defendant's determination to refuse access to the requested agency records under exemption (7)(A).

143. By letter dated February 12, 2004, Defendant denied Plaintiff's appeal refusing Plaintiff access to all of the requested agency records on grounds of 5 U.S.C. § 552(b)(7)(A).

144. Plaintiff has exhausted his administrative remedies.

145. Plaintiff has a right of access to the requested records under 5 U.S.C. § 552(a). None of the records have been disclosed to Plaintiff as required by the Freedom of Information Act.

Count XX

146. Plaintiff realleges paragraphs 1 through 145 as fully stated herein.

147. By letter dated February 9, 2004, Plaintiff requested pursuant to the FOIA, "any documents or records regarding any informal and/or formal investigations and/or inquiries of Orthodontic Centers of America, Inc. since my last request in June 2003 which were either: (1) sent by the Commission to Orthodontic Centers of America, Inc. (or its agents) or (2) received by the SEC from Orthodontic Centers of America, Inc. (or its agents)." Plaintiff also requested "copies of any SEC comment letters sent to or received from Orthodontic Centers of America, Inc. (or its agents) since his last request in June 2003."

148. By letter dated March 12, 2004, Defendant SEC's FOIA/Privacy Act Office denied Plaintiff's request, given the FOIA number 2004-2883, by stating, "[W]e are

withholding the nonpublic records may be responsive to your request under 5 U.S.C. § 552(b)(7)(A), 17 CFR § 200.80(b)(7)(i).”

149. By letter dated June 22, 2004, Plaintiff administratively appealed the Defendant’s determination to refuse access to the requested agency records under exemption (7)(A).

150. By letter dated September 21, 2004, Defendant denied Plaintiff’s appeal refusing Plaintiff access to all of the requested agency records on grounds of 5 U.S.C. § 552(b)(7)(A).

151. Plaintiff has exhausted his administrative remedies.

152. Plaintiff has a right of access to the requested records under 5 U.S.C. § 552(a). None of the records have been disclosed to Plaintiff as required by the Freedom of Information Act.

Count XXI

153. Plaintiff realleges paragraphs 1 through 152 as fully stated herein.

154. By letter dated September 25, 2003, Plaintiff requested pursuant to the FOIA, copies of “any documents or records regarding any informal and/or formal investigations and/or inquiries of Sears, Roebuck & Co. by the Commission within the past three (3) years.” Plaintiff also requested “any SEC comment letters sent to or received from Sears, Roebuck & Co. within the past two years.”

155. By letter dated November 12, 2003, Defendant SEC’s FOIA/Privacy Act Office denied Plaintiff’s request, given the FOIA number 2003-5751, in its entirety by stating, “[W]e are withholding certain records that may be responsive to your request under 5 U.S.C. § 552(b)(7)(A), 17 CFR § 200.80(b)(7)(i).”

156. By letter dated December 16, 2003, Plaintiff administratively appealed the Defendant's determination to refuse access to the requested agency records under exemption (7)(A).

157. By letter dated February 12, 2004, Defendant denied Plaintiff's appeal refusing Plaintiff access to all of the requested agency records on grounds of 5 U.S.C. § 552(b)(7)(A).

158. Plaintiff has exhausted his administrative remedies.

159. Plaintiff has a right of access to the requested records under 5 U.S.C. § 552(a). None of the records have been disclosed to Plaintiff as required by the Freedom of Information Act.

Count XXII

160. Plaintiff realleges paragraphs 1 through 159 as fully stated herein.

161. By letter dated September 17, 2003, Plaintiff requested pursuant to the FOIA, copies of "any documents or records regarding any informal and/or formal investigations and/or inquiries of Webmd Corporation by the Commission within the past three (3) years." Plaintiff also requested "any SEC comment letters sent to or received from Webmd Corporation within the past two years."

162. By letter dated December 2, 2003, Defendant SEC's FOIA/Privacy Act Office denied Plaintiff's request, given the FOIA number 2003-5590, in its entirety by stating, "[C]ertain records identified in our indices may be responsive to your request. However, the file was compiled for law enforcement purposes, the release of which could reasonably be expected to interfere with enforcement activities undertaken or likely to be

undertaken by the Commission. I am withholding the records under 5 U.S.C. § 552(b)(7)(A), 17 CFR § 200.80(b)(7)(i).”

163. By letter dated January 16, 2004, Plaintiff administratively appealed the Defendant’s determination to refuse access to the requested agency records under exemption (7)(A).

164. By letter dated February 12, 2004, Defendant denied Plaintiff’s appeal refusing Plaintiff access to all of the requested agency records on grounds of 5 U.S.C. § 552(b)(7)(A).

165. Plaintiff has exhausted his administrative remedies.

166. Plaintiff has a right of access to the requested records under 5 U.S.C. § 552(a). None of the records have been disclosed to Plaintiff as required by the Freedom of Information Act.

Count XXIII

167. Plaintiff realleges paragraphs 1 through 166 as fully stated herein.

168. By letter dated July 30, 2003, Plaintiff requested pursuant to the FOIA, copies of “any documents or records regarding any informal and/or formal investigations and/or inquiries of Interpublic Group of Companies, The by the Commission within the past three (3) years.” Plaintiff also requested “any SEC comment letters sent to or received from Interpublic Group of Companies, The within the past two years.”

169. By letter dated September 4, 2003, Defendant SEC’s FOIA/Privacy Act Office denied Plaintiff’s request, given the FOIA number 2003-4718, in its entirety by stating, “[C]ertain records identified in our indices may be responsive to your request. However, since we have not reviewed the documents, we are not sure if they relate to the

subject (s) of your request. Additionally, the file was compiled for law enforcement purposes, the release of which could reasonably be expected to interfere with enforcement activities undertaken or likely to be undertaken by the Commission. Consequently, at this time, I am withholding the records under 5 U.S.C. § 552(b)(7)(A), 17 CFR § 200.80(b)(7)(i).”

170. By Defendant’s own admission, it did not review the responsive documents. Defendant merely opined that it believed the documents may be responsive to the request and withheld them in full. Defendant did not make any attempt to release reasonably segregable information as required by the FOIA.

171. By letter dated October 6, 2003, Plaintiff administratively appealed the Defendant’s determination to refuse access to the requested agency records under exemption (7)(A).

172. By letter dated December 15, 2003, Defendant denied Plaintiff’s appeal refusing Plaintiff access to all of the requested agency records on grounds of 5 U.S.C. § 552(b)(7)(A).

173. Plaintiff has exhausted his administrative remedies.

174. Plaintiff has a right of access to the requested records under 5 U.S.C. § 552(a). None of the records have been disclosed to Plaintiff as required by the Freedom of Information Act.

Count XXIV

175. Plaintiff realleges paragraphs 1 through 174 as fully stated herein.

176. By letter dated August 5, 2003, Plaintiff requested pursuant to the FOIA, copies of “any documents or records regarding any informal and/or formal investigations

and/or inquiries of Biolase Technology, Inc. by the Commission within the past three (3) years.” Plaintiff also requested “any SEC comment letters sent to or received from Biolase Technology, Inc. within the past two years.”

177. By letter dated September 24, 2003, Defendant SEC’s FOIA/Privacy Act Office denied Plaintiff’s request, given the FOIA number 2003-4797, in its entirety by stating, “[w]e have identified a file that may contain records responsive to your request. However, all matters under inquiry are considered deliberative and predecisional in nature, and as such are exempt from disclosure under 5 U.S.C. § 552(b)(5), 17 CFR § 200.80(b)(5).”

178. By letter dated October 30, 2003, Plaintiff administratively appealed the Defendant’s determination to refuse access to the requested agency records under exemption 5.

179. By letter dated February 2, 2004, Defendant continued to deny Plaintiff access to the requested records. However, on administrative appeal, Defendant did not make a finding as to the applicability of FOIA Exemption 5. Instead, Defendant asserted that the records were now being withheld pursuant to FOIA Exemption (7)(A). Defendant further made blanket assertion that providing an “estimate of the withheld materials would undermine the interests which Exemption (7)(A) protects, FOIA does not require such estimation in this case. See 5 U.S.C. § 552(a)(6)(F).”

180. Plaintiff has exhausted his administrative remedies.

181. Plaintiff has a right of access to the requested records under 5 U.S.C. § 552(a). None of the records have been disclosed to Plaintiff as required by the Freedom of Information Act.

Count XXV

182. Plaintiff realleges paragraphs 1 through 181 as fully stated herein.

183. By letter dated March 17, 2004, Plaintiff requested pursuant to the FOIA, copies of “any documents or records regarding any informal and/or formal investigations and/or inquiries of SPX Corporation (or its agents) since my last request in November 2002.” Plaintiff also requested “any SEC comment letters sent to or received from SPX Corporation (or its agents) by the Commission since my last request in November 2002.”

184. By letter dated April 26, 2004, Defendant SEC’s FOIA/Privacy Act Office denied Plaintiff’s request, given the FOIA number 2004-4032, by stating, “[W]e are withholding certain records that may be responsive to your request under 5 U.S.C. 552(b)(7)(A), 17 CFR 200.80(b)(7)(i). This exemption protects from disclosure records compiled for law enforcement purposes, the release of which could reasonably be expected to interfere with enforcement activities.”

185. By letter dated August 4, 2004, Plaintiff administratively appealed the Defendant’s determination to refuse access to the requested agency records under exemption (7)(A). In his appeal, Plaintiff specifically requested that if the Commission was unable to release all or a portion of the document, that at a minimum they could release the initial correspondence from the SEC to SPX corporation and any subpoenas served. Plaintiff sought the release of the requested records.³

186. By letter dated September 20, 2004, Defendant denied Plaintiff’s appeal refusing Plaintiff access to all of the requested agency records on grounds of 5 U.S.C. § 552(b)(7)(A).

³ By letter dated August 27, 2004 in response to another FOIA request on SPX for investigatory records, the SEC provided “[W]e did not identify any investigatory records or inquiries.”

187. Plaintiff has exhausted his administrative remedies.

188. Plaintiff has a right of access to the requested records under 5 U.S.C. § 552(a). None of the records have been disclosed to Plaintiff as required by the Freedom of Information Act.

Count XXVI

189. Plaintiff realleges paragraphs 1 through 188 as fully stated herein.

190. By letter dated December 18, 2003, Plaintiff requested pursuant to the FOIA, copies of “any documents or records regarding any informal and/or formal investigations and/or inquiries of Citigroup Inc. by the Commission within the past three (3) years.” Plaintiff also requested “any SEC comment letters sent to or received from Citigroup Inc. within the past two years.”

191. By letter dated March 26, 2004, Defendant SEC’s FOIA/Privacy Act Office denied Plaintiff’s request, given the FOIA number 2004-3265, in its entirety by stating, “[A]ccess is denied to all records responsive to your request, under 5 U.S.C. § 552(b)(7)(A), 17 CFR § 200.80(b) (7) (i).”

192. By letter dated April 22, 2004, Plaintiff administratively appealed the Defendant’s determination to refuse access to the requested agency records under exemption (7)(A).

193. Upon information and belief, Citigroup Inc., has been involved in a number of legal and administrative matters with the SEC. Upon further information and belief, Citigroup, Inc., settled at least some of the outstanding matters with the SEC.

194. By letter dated September 22, 2004, Defendant denied Plaintiff's appeal refusing Plaintiff access to all of the requested agency records on grounds of 5 U.S.C. § 552(b)(7)(A).

195. Plaintiff has exhausted his administrative remedies.

196. Plaintiff has a right of access to the requested records under 5 U.S.C. § 552(a). None of the records have been disclosed to Plaintiff as required by the Freedom of Information Act.

Count XXVII

197. Plaintiff realleges paragraphs 1 through 196 as fully stated herein.

198. Defendant has failed to provide or make any attempt to release reasonably segregable information as required by the FOIA. The Defendant has also categorically denied records in violation of the FOIA.

Count XXVIII

199. Plaintiff realleges paragraphs 1 through 198 as fully stated herein.

200. In response to FOIA requests, the SEC asserts various exemptions under the FOIA including but not limited to, (7)(A), b(4), and b(5). These exemptions are asserted by the SEC in an arbitrary and capricious manner in violation of the FOIA 5 U.S.C. § 552(a), and Administrative Procedures Act.

Count XXIX

201. Plaintiff realleges paragraphs 1 through 200 as fully stated herein.

202. Upon information and belief, the SEC only issued approximately 3 "Glomar responses" in the ten years prior to 2002. In or about 2002, upon information and belief, the SEC began asserting "Glomar responses" in response to FOIA requests and issued

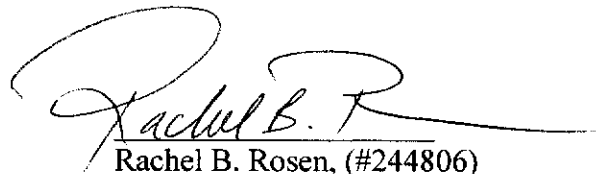
over 90 (ninety) such "Glomar responses." Such responses in these instances are not only contrary to law and have no basis under FOIA, but have been asserted by the SEC in an arbitrary and capricious manner in violation of the FOIA 5 U.S.C. § 552(a), and the Administrative Procedures Act.

Prayer for Relief

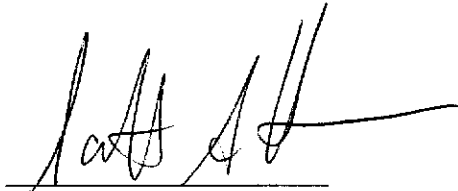
WHEREFORE, Plaintiff requests that this Court:

- (1.) Enjoin the Defendant from asserting the "Glomar" response; Or in the alternative;
- (2.) Enjoin the Defendant from asserting the "Glomar" response in an arbitrary and capricious manner and from asserting the "Glomar" response when there is a known investigation of a public company;
- (3.) Enjoin the Defendant from withholding the requested records and order the Defendant to release such Documents to Plaintiff;
- (4.) Expedite the proceedings in this action;
- (5.) Award Plaintiff his costs and reasonable attorney's fees incurred in this action as under 5 U.S.C. § 552(a)(4)(E); and
- (6.) Grant such other and further relief as this Court may deem just and proper.

Respectfully Submitted,

A handwritten signature in cursive script, appearing to read "Rachel B. Rosen", is written over a horizontal line.

Rachel B. Rosen, (#244806)
3185 Fernbrook Lane, Suite Two
Plymouth, MN 55447
(763) 595-0900
General Counsel
Dated: October 18, 2004

A handwritten signature in black ink, appearing to read 'Scott A. Hodes', written over a horizontal line.

Scott A. Hodes (D.C. Bar #430375)

P.O. Box 42002

Washington, D.C. 20015

(301) 404-0502

Co-Counsel for Plaintiff

Dated: October 18, 2004

3185 Fernbrook Lane
Suite Two
Plymouth, MN 55447
secinsight.com



i n s i g h t

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October 18, 2004

Clerk of Court
United States District Court
202 U.S. Courthouse
300 South 4th Street
Minneapolis, MN 55415

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04 OCT 18 PM 2:59
CLERK, U.S. DIST. COURT
MINNEAPOLIS, MN

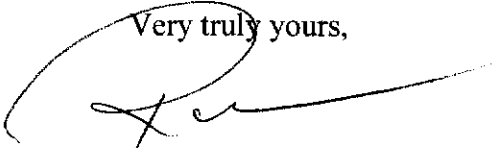
Re: Gavin v. SEC

Dear Clerk:

Enclosed herewith for filing please find the Complaint, Civil Cover sheet, Filing fee, and Motion for Pro Hac Vice relative to the above-entitled matter. I have also enclosed herewith a Summons to be issued by the clerk.

If you have any questions regarding the enclosed, please feel free to contact me at 763-595-0900.

Very truly yours,


Rachel B. Rosen
Attorney at Law

JS 44 (Rev. 3/99)

CIVIL COVER SHEET 04-4522 PAM/RLE

The JS-44 civil cover sheet and information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

1. (a) PLAINTIFFS

J. Patrick Gavin A/K/A John P. Gavin, also doing business as
SEC Insight, Inc.

DEFENDANTS

United States Securities and Exchange Commission

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF Hennepin
(EXCEPT IN U.S. PLAINTIFF CASES)

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT District of Columbia
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

Rachel B. Rosen, General Counsel SEC Insight, Inc., 3185
Fernbrook Lane, Plymouth, MN 55447; Co-Counsel, Scott A.
Hodes, P.O. Box 42002, Washington, D.C. 20015

ATTORNEYS (IF KNOWN)

General Counsel's Office, United States Securities and Exchange
Commission, 450 Fifth Street, N.W. Room 1012-B, Washington,
D.C. 20549-0207

II. BASIS OF JURISDICTION (PLACE AN "X" IN ONE BOX ONLY)

- ☐ 1 U.S. Government Plaintiff
☒ 2 U.S. Government Defendant
☐ 3 Federal Question (U.S. Government Not a Party)
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN "X" IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

- | PTF | DEF | PTF | DEF |
|--|---------------------------------------|--|----------------------------|
| <input type="checkbox"/> Citizen of This State | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 |
| <input type="checkbox"/> Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 |
| <input type="checkbox"/> Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> Foreign Nation | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (PLACE AN "X" IN ONE BOX ONLY)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault Libel & Slander <input type="checkbox"/> 330 Federal Employers Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth In Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 810 Agriculture <input type="checkbox"/> 820 Other Food & Drug <input type="checkbox"/> 825 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 830 Liquor Laws <input type="checkbox"/> 840 R.R. & Truck <input type="checkbox"/> 850 Airline Regs. <input type="checkbox"/> 860 Occupational Safety/Health <input type="checkbox"/> 890 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input checked="" type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 Habeas Corpus: General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition		

V. ORIGIN

(PLACE AN "X" IN ONE BOX ONLY)

- ☒ 1 Original Proceeding
☐ 2 Removed from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Reopened
☐ 5 Transferred from another district (specify)
☐ 6 Multidistrict Litigation
☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION (CITE THE U. S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY.)

5 U.S.C. 552 as amended to compel the production of documents and such other relief as available under the Freedom of Information Act.

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION
☐ UNDER F.R.C.P 23

DEMAND \$
Attorney fees

CHECK YES only if demanded in Complaint
JURY DEMAND: ☐ YES ☒ NO

VIII. RELATED CASE(S) (See instructions): IF ANY

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

10/18/04

Rachel B. Rosen

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____